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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,210	12/12/2001	Thitiwan Buranachokpaisan	D48001	8878

7590

09/16/2003

CHURCH & DWIGHT CO., INC.  
469 North Harrison Street  
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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 09/16/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

10/021,210

Applicant(s)

BURANACHOKPAISAN, THITIWA

Examiner

Lauren Q Wells

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

Claims 1-24 are pending. Claim 24 is withdrawn from consideration, as it is directed toward non-elected subject matter.

#### ***Election/Restrictions***

The Election of Species Requirement of Paper No. 5, mailed 5/14/03, is hereby withdrawn.

Applicant's election with traverse of the Restriction Requirement in Paper No. 7 is acknowledged. The traversal is on the ground(s) that applicant disputes that the claimed process would find utility in a process for making lipsticks. This is not found persuasive, as lipsticks and antiperspirant sticks are both cosmetic sticks that are made in the same way with many of the same ingredients. The instant method can be used to make a lipstick formulation.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) The term "predominantly" in claim 4, line 1, is a relative term which renders the claim indefinite. The term "predominantly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linn et al. (5,833,964) in view of Murphy et al. (6,468,513) and Scholz et al. (6,562,360).

The instant invention is directed to an antiperspirant stick comprising 25-55% a volatile material, 5-35% of a non-volatile liquid emollient, 0.5-15% of a non-liquid organic ester emollient, 5-20% of an organic wax base, 0.5-5% of a low MW polyethylene homo or co-polymer, 15-30% of a particulate antiperspirant active agent.

Linn et al. exemplify a composition comprising 35.1% cyclomethicone (a), 10% phenyltrimethicone (b), 20% aluminum zirconium tetrachlorohydrate gly complex (f), 2% PEG-8 distearate (b), 1.9% fragrance/starch, 4% hydrogenated castor oil (d), 17% stearyl alcohol (d), and isostearyl isostearate. The gelling agents (referred to as a wax base in the instant invention) are taught as comprising 17-40% of the composition, the antiperspirant active is taught as comprising 10-30% of the composition, cyclomethicone is taught as comprising 30-50% of the composition. PPG-14 butyl ether is taught as an emollient that can be combined with isostearyl isostearate. DC-345 is taught as a preferred cyclomethicone, wherein DC-345 is cyclopentasiloxane. Inert fillers, such as fumed silica can be added to the composition. See Col. 3, line 33-Col. 8, line 15. The reference lacks a polyethylene polymer, a non-liquid ester emollient, and octyl isononanoate.

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Murphy et al. teach antiperspirant compositions. Polyethylene materials, such as Performalene 400 (homopolymer of polyethylene of MW 400), are taught as thickeners and skin feel improvers that are added to the composition in an amount of 0.5-5%, and that are combined with formulation aids. Hydrophobic organic esters are taught as formulation aids, wherein the esters comprise from about 1-8% of the composition (about 1 to about 8, can be broadly interpreted to mean 10%). Octyl isononanoate is taught as a hydrophobic organic ester. See Col. 7, line 63-Col. 9, line 27.

Scholz et al. teach behenyl isostearate as a cosmetically conventional emulsifier/emollient that increases the stability of cosmetic compositions. These compounds typically comprise from 0.05-8% of the composition. See Col. 20, lines 15-23.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add Performalene 400 and octyl isononanoate, as taught by Murphy et al., into the composition of Linn et al. because of the expectation of achieving a product ~~that product,~~ wherein the thickener is well solubilized, and that imparts a great feel to the skin while simultaneously thickening the product.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add behenyl isostearate, as taught by Scholz et al., into the composition of Linn et al. because of the expectation of increasing the stability of the composition.

While an amount of 0.5% silica is not exemplified it would have been obvious to teach the composition of Linn et al. as comprising 0.5% silica because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

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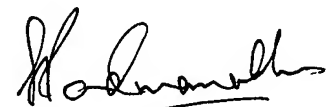
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw



SREENI PADMANABHAN  
PRIMARY EXAMINER

8/20/03